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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/856,760 05/23/2001		Gregg Henderson	98A16-US HEN	2331	
25547 75	590 03/03/2003				
PATENT DEPARTMENT			EXAMINER		
TAYLOR, POR	RTER, BROOKS & PH	PRYOR, ALTON NATHANIEL			
BATON ROUC	GE, LA 70821-2471		ART UNIT	PAPER NUMBER	
			1616	1/	
	·		DATE MAILED: 03/03/2003	//	

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No. 09/856,760

Applicant(s)

Henderson et al

Examiner

**Alton Pryor** 

Art Unit **1616** 



	The M	IAILING DATE of this	communication appears	on the cover sh	eet with	the correspondence address	
	for Reply						
THE N	MAILING sions of time r	DATE OF THIS CON may be available under the pro				MONTH(S) FROM  De timely filed after SIX (6) MONTHS from the	
- If the p - If NO p - Failure - Any re	period for reploseriod for reploseriod for reply with	ly is specified above, the maxi ain the set or extended period f	for reply will, by statute, cause the months after the mailing date of t	and will expire SIX (6) he application to become	MONTHS fr me ABANDO	rom the mailing date of this communication. ONED (35 U.S.C. § 133).	
Status							
1) 💢	Respons	ive to communicatio	n(s) filed on <u>Dec 20, 2</u>	2002			. ·
2a) 🗌	This act	ion is <b>FINA</b> L.	2b) 💢 This act	tion is non-final			
3) 🗆			endition for allowance on the practice under <i>Ex par</i>			ers, prosecution as to the merits is 11; 453 O.G. 213.	
Disposit	tion of CI	aims					
4) 💢	Claim(s)	1-28				is/are pending in the application.	
4	la) Of the	above, claim(s)				is/are withdrawn from considerat	ion.
5) 💢	Claim(s)	9-20				is/are allowed.	
6) 💢	Claim(s)	1-8, 21-24, 27, and	28			is/are rejected.	
7) 💢	Claim(s)	25 and 26				is/are objected to.	
_						to restriction and/or election requirem	ient.
Applica	ition Pape	ers					
9) 🗆	The spe	cification is objected	to by the Examiner.				
10)	The drav	wing(s) filed on	is/are	a) 🗆 accepte	d or b)	$\Box$ objected to by the Examiner.	
	Applica	nt may not request the	at any objection to the d	Irawing(s) be he	ld in abey	yance. See 37 CFR 1.85(a).	
11)	The pro	posed drawing correc	ction filed on	is:	: a) □ a	pproved b) $\square$ disapproved by the Exa	miner.
	If appro	ved, corrected drawin	gs are required in reply t	to this Office ac	tion.		
12)	The oath	n or declaration is ob	jected to by the Exami	iner.			
		5 U.S.C. §§ 119 and					
	_		of a claim for foreign pr	riority under 35	U.S.C.	§ 119(a)-(d) or (f).	
	_	☐ Some* c)☐ I					
	1. Certified copies of the priority documents have been received.						
	_					lication No ,	
		application from	copies of the priority do the International Bure e action for a list of the	au (PCT Rule 1	7.2(a)).	ceived in this National Stage	
14) 🗆			of a claim for domestic	•			
a) □	_		gn language provisiona				
			of a claim for domestic				
Attachme		•					
1) 💢 No	tice of Refere	ences Cited (PTO-892)		4) Interview Su	mmary (PTO	9-413) Paper No(s)	
2) No	tice of Drafts	person's Patent Drawing Revie	w (PTO-948)	5) Notice of Info	ormal Patent	Application (PTO-152)	
3) Info	ormation Disc	closure Statement(s) (PTO-144	·9) Paper No(s)	6) Other:			

#### Claim Rejections under 35 U.S.C. 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 2. Claims 1-5,21,22,27 are rejected under 35 U.S.C. 102(b) as being anticipated by Baxter et al (Food Chemistry, 1979, vol. 4 no. 4, pp. 319-21). Baxter teaches a method wherein nootkatone is added to water (aqueous citric acid). Water is considered a wood building material as well as a substrate. See abstract. Although the prior art does not state that the treatment of water with nootkatone would repel or kill termites, it is inherent that water treatment with nootkatone would kill or repel termites.

Claims 1-4,7,8,28 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 61033129; 2/17/86. JP '129 teaches a method wherein bicyclovetivenol is used as a local anesthetic (applied to the body). The body is considered the substrate. See abstract. Although the prior art does not state that the treatment of the body with bicyclovetivenol would repel or kill termites, it is inherent that body treatment with bicyclovetivenol would kill or repel termites.

Claims 1-4,6,8,28 are rejected under 35 U.S.C. 102(b) as being anticipated by Nishimura et al (Koryo, 1982, vol. 135, pp. 89-95. Nishimura teaches a method wherein zizanol is added to ketones and acids. Ketone and acid are considered materials or substrates. See abstract. Although

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the prior art does not state that the zizanol mixture would repel or kill termites, it is inherent that zizanol mixture would kill or repel termites.

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- 3. Claims 1-5,8,21,22,27 are rejected under 35 U.S.C. 102(a) as being anticipated by Kashihara (WO 200027907; 5/18/02). Kashihara teaches a method wherein nootkatone is added to water or plastic. Water or plastic is considered a material as well as a substrate. See abstract. Although the prior art does not state that the treatment of water or plastic with nootkatone would repel or kill termites, it is inherent that water / plastic treatment with nootkatone would kill or repel termites.

## Claim Rejections under 35 U.S.C. 103(a)

- 4. Claims 22,24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baxter as applied to claims 1-5,21,22,27 above. Baxter teaches all that is recited in claims 22,24 except for the instant invention comprising the instant amounts of nootkatone. However, one having ordinary skill in the art would have been expected to determine the optimum amount of nootkatone. One would have been motivated to do this in order to make an invention with optimum odor control.
- 5. Claims 22,24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kashihara as applied to claims 1-5,8,21,22,27 above. Kashihara teaches all that is recited in claims 22,24 except for the instant invention comprising the instant amounts of nootkatone. However, one having ordinary skill in the art would have been expected to determine the optimum amount of

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nootkatone. One would have been motivated to do this in order to make an invention for optimum volume reduction of styrene foams.

## Claim Objection / Allowable Subject Matter

Claims 25,26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach or suggest the instant invention comprising zizanol or bicyclovetivenol plus a wood building material. Claims 9-20 are allowable. The prior art does not teach or suggest the instant invention comprising the instant compounds plus mulch, soil, and diatomaceous earth.

#### Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

Alton Pryor

ALTON N. PRYOR PRIMARY EXAMINER

Primary Examiner, AU 1616

3/2/03